

3/23/15

11:40 A.M.

Chapter No. 395
15/HR26/R530SG
CST/NC

HOUSE BILL NO. 711

Originated in House



Clerk

HOUSE BILL NO. 711

AN ACT TO AMEND SECTIONS 89-7-31, 89-7-35, 89-7-41 AND 89-8-13, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE DISPOSITION OF PERSONAL PROPERTY OF A TENANT REMAINING ON A LANDLORD'S PREMISES AFTER THE TENANT HAS BEEN REMOVED FROM THE PREMISES; TO AMEND SECTIONS 89-7-51, 89-7-57, 89-7-61 AND 89-7-69, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 89-7-31, Mississippi Code of 1972, is amended as follows:

89-7-31. (1) On receiving * * * the affidavit, the county judge, justice court judge, * * * municipal judge, or other officer shall issue a summons, directed to the sheriff or any constable of the county, or the marshal of the * * * municipality in which the premises, or some part thereof, are situated, describing the premises, and commanding him to require the person in possession of the same or claiming the possession thereof, * * * immediately to remove * * * from the premises, or to show cause before the justice court judge or other officer, on a day to be named not less than three (3) nor more than five (5)

days from the date of the summons, why possession of the premises should not be delivered to the applicant.

(2) In addition to other information required for the summons, the summons shall state: "At the hearing, a judge will determine if the landlord is granted exclusive possession of the premises. If the judge grants possession of the premises to the landlord and you do not remove your personal property, including any manufactured home, from the premises before the date and time ordered by the judge, then the landlord may dispose of your personal property without any further legal action."

SECTION 2. Section 89-7-35, Mississippi Code of 1972, is amended as follows:

89-7-35. (1) If, at the time appointed, it appears that the summons has been duly served, and if sufficient cause * * * is not shown to the contrary, the magistrate shall issue his warrant to the sheriff or any constable of the county, or to a marshal of the * * * municipality in which the premises, or some part thereof, are situated, commanding him to remove all persons from the premises, and to put the applicant into full possession thereof.

(2) If the summons complied with the requirements of Section 89-7-31(2) and if the tenant has failed to remove any of tenant's personal property, including any manufactured home, from the premises, then, if the judge has not made some other finding regarding the disposition of any personal property in the vacated

premises, the personal property shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

SECTION 3. Section 89-7-41, Mississippi Code of 1972, is amended as follows:

89-7-41. (1) If the decision * * * is in favor of the landlord or other person claiming the possession of the premises, the magistrate shall issue his warrant to the sheriff, constable, or other officer, commanding him * * * immediately to put * * * the landlord or other person into possession of the premises, and to levy the costs of the proceedings of the goods and chattels, lands and tenements, of the tenant or person in possession of the premises who shall have controverted the right of the landlord or other person.

(2) If the summons complied with the requirements of Section 89-7-31(2) and if the tenant has failed to remove any of tenant's personal property, including any manufactured home, from the premises, then, if the judge has not made some other finding regarding the disposition of any personal property in the vacated premises, the personal property shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

SECTION 4. Section 89-8-13, Mississippi Code of 1972, is amended as follows:

89-8-13. (1) If there is a material noncompliance by the tenant with the rental agreement or the obligations imposed by Section 89-8-25, the landlord may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(2) If there is a material noncompliance by the landlord with the rental agreement or the obligations imposed by Section 89-8-23, the tenant may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(3) The nonbreaching party may deliver a written notice to the party in breach specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within a reasonable time not in excess of thirty (30) days; and the rental agreement shall terminate and the tenant shall surrender possession as provided in the notice subject to the following:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise, and the breaching party adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate;

(b) In the absence of a showing of due care by the breaching party, if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs

within six (6) months, the nonbreaching party may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement;

(c) Neither party may terminate for a condition caused by his own deliberate or negligent act or omission or that of a member of his family or other person on the premises with his consent.

(4) If the rental agreement is terminated, the landlord shall return all prepaid and unearned rent and security recoverable by the tenant under Section 89-8-21.

(5) Notwithstanding the provisions of this section or any other provisions of this chapter to the contrary, if the material noncompliance by the tenant is the nonpayment of rent pursuant to the rental agreement, the landlord shall not be required to deliver thirty (30) days' written notice as provided by subsection (3) of this section. In such event, the landlord may seek removal of the tenant from the premises in the manner and with the notice prescribed by Chapter 7, Title 89, Mississippi Code of 1972.

(6) Disposition of personal property, including any manufactured home, of a tenant remaining on the landlord's premises after the tenant has been removed from the premises shall be governed by Section 89-7-35(2) or Section 89-7-41(2).

SECTION 5. Section 89-7-51, Mississippi Code of 1972, is amended as follows:

89-7-51. (1) Every lessor of land shall have a lien on the agricultural products of the leased premises, however and by whomsoever produced, to secure the payment of the rent and of money advanced to the tenant, and the fair market value of all advances made by him to his tenant for supplies for the tenant and others for whom he may contract, and for his business carried on upon the leased premises. This lien shall be paramount to all other liens, claims, or demands upon such products when perfected in accordance with Uniform Commercial Code Article 9 - Secured Transactions (Section 75-9-101 * * * et seq.). The claim of the lessor for supplies furnished may be enforced in the same manner and under the same circumstances as his claim for rent may be; and all the provisions of law as to attachment for rent and proceedings under it shall be applicable to a claim for supplies furnished, and such attachment may be levied on any goods and chattels liable for rent, as well as on the agricultural products.

(2) All articles of personal property, except a stock of merchandise sold in the normal course of business, owned by the lessee of real property and situated on the leased premises shall be subject to a lien in favor of the lessor to secure the payment of rent for such premises as has been contracted to be paid, whether or not then due. * * * This lien shall be subject to all prior liens or other security interests perfected according to law. No such articles of personal property may be removed from the leased premises until such rent is paid except with the

written consent of the lessor. All of the provisions of law as to attachment for rent and proceedings thereunder shall be applicable with reference to the lessor's lien under this subsection.

SECTION 6. Section 89-7-57, Mississippi Code of 1972, is amended as follows:

89-7-57. To obtain * * * the attachment or distress, the party entitled thereto, his agent or attorney, shall make complaint on oath before a justice * * * court judge averring the facts which entitle the party seeking it to the remedy; and, if anything * * * is demanded on account of supplies, there shall be filed with the complaint an itemized bill of particulars thereof. The complainant shall enter into bond with sufficient sureties, payable to the tenant, his executor or administrator, in a penalty equal to double the sum claimed to be due, conditioned to pay all * * * damages as may be sustained by the obligee by the wrongful suing out of the writ, and all costs that may be awarded against the principal obligor.

SECTION 7. Section 89-7-61, Mississippi Code of 1972, is amended as follows:

89-7-61. When the complaint * * * has been made and bond given * * * and approved by the justice court judge, it shall be his duty to issue a distress warrant or attachment-writ, commanding the seizure of the agricultural products, if any, upon which the party instituting the proceedings shall have claimed a lien, and also commanding the officer to distrain the goods and

chattels other than the agricultural products of * * * the tenant, if necessary, and deal with the same as provided by law; the entire seizure and distraint to be of value sufficient to satisfy the sum demanded with interest and costs.

SECTION 8. Section 89-7-69, Mississippi Code of 1972, is amended as follows:

89-7-69. The officer making a distress or seizure shall give notice thereof, with the cause of taking, to the tenant or his representative in person if * * * found, or if not found, by leaving * * * the notice at the dwelling house or other conspicuous place on the premises charged with the rent distrained for, and shall * * * immediately advertise the property distrained or seized for sale as if under execution; and if the tenant or owner of the goods distrained or seized shall not, before the time appointed for the sale, replevy the same by giving bond with sufficient sureties, to be approved by such officer, payable to the plaintiff in the attachment, in double the amount claimed, conditioned for the payment of the sum demanded, with lawful interest for the same, and costs, at the end of three (3) months after making * * * the distress, the officer shall sell the goods and chattels distrained or seized at public sale to the highest bidder for cash, and shall, out of the proceeds of the sale, pay the costs of the proceedings, and shall pay to the plaintiff the amount of his demand, with interest.

SECTION 9. This act shall take effect and be in force from and after July 1, 2015.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 4, 2015


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 5, 2015


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

3/23/15
11:40am